IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
FIRST APPEAL NO.1057 OF 1991.

The Union of India
through its General Manager,
Central Railways, having its
office at Bombay, V.T.
Bomaby, : Appellant.

versus

M/s.Bhivraj Kanmal : Respondent.

Mr.A.N.Samant for the appellants.

None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 16th August 2005.

ORAL ORDER

1. By this appeal the Union of India has challenged the order of the Tribunal awarding compensation to the respondent. Heard Mr.Samant. Nobody is present for the respondent, though served.

2. Mr.Samant, the learned counsel for the appellants, has raised only three contentions. Firstly, according to him, the claim was filed by

the original claimant against two railways i.e. General Manager, Central Railway, Bombay and General Manager, South Eastern Railway, and the tribunal passed an award against both the railways. Therefore, according to Mr.Samant there can be liability only of one railway and not of both the railways.

3. Secondly, he contended that the Railway Receipt was issued by the Railway as "Said to Contain" basis.

4. Thirdly, he contended that the plaint was singed by one Parasmal Chotmal. But as per Registration Certificate of the applicant firm Parasmal Khetmal was the partner. He, therefore contended that the plaint was not signed by a person duly authorised. This contention was negatived by the tribunal accepting the explanation given by the claimant that it was a typing mistake. Apart from this, there is no other dispute that the original claimant and the present respondent was not competent to lodge this claim or was not authorised to lodge this claim. Therefore, only on this technical point the claim could not have been rejected. as has

been rightly done by the trial Court.

5. Mr.Samant also tried to contend that the claimant did not adduce any evidence to show the condition of goods which were entrusted to the railways. The goods were onions and, according to him, if they are unfit for human consumption, the applicant would not have been entitled to any compensation. It do find any much substance in this condition. Because ordinarily no businessman will sale the goods or book the goods that are unfit for human consumption.

6. Mr.Samant does not press the point of interest because it is less.

. If at all there is liability of the Union of India, then decree against one of the railways would be proper and sufficient. In many such appeals of the Union of India I have accepted this contention. Therefore, the impugned judgment will have to be maintained against General Manager, Central Railway only and order against other railways has to be set aside.

7. So far as the contention of Mr.Samant

regarding RR with the endorsement "Said to Contain" is concerned, the same is required to be rejected. In this case, the suit consignment of 361 packets of onions weighing 162.50 quintals was booked under Invoice No.64, RR.No.103389 dated 31.1.1974 Ex.Nandgaon to Shalimar. According to the applicants, they have purchased best quality onions and contracted with the railways to carry the goods to the destination. The consignee M/s.Ganeshilal & Co. was the commission agent. The consignment reached destination and delivered on 21.2.1974. According to the applicants, the best quality onions remain in sound condition in normal period of transit. The railways was bound to carry the goods with reasonable time of 6-7 days. In this case the railway had brought these goods at abnormally late in fully damaged and rotten condition. A shortage/damage certificate was issued by the railway. The claimant claimed Rs.2870/- on the basis of damage certificate.

. The Tribunal framed as many as 16 Issues but the Issue regarding RR "Said to contain" was not at all framed. The tribunal found that there

was total negligence and inordinate delay in delivery of consignment by the railways. So far as compensation is concerned, the railways had issued damaged certificate (Exhibit 29(3). It appears from the damage certificate that the consignment reached destination on 19th day and the condition of the goods at the time of delivery has been clearly stated in Ex.29(3) the damage certificate. As per the damage certificate out of 361 bags, 201 bags were in damaged condition. The tribunal found that the damage was occurred when the consignment was in transit and held that the claimant was entitled for the compensation.

8. Railways can raise defence of said to contain when railways dispute the quantity entrusted to them and accept the representation of the consignor in that regard for the purpose of freight charges. However, the claim in this case is on the basis of actual damage certificate and if the actual damage suffered can be ascertained on the basis of the evidence on record, then question as to how much quantity was entrusted to the railways becomes secondary. The damage certificate shows that railways were in a

position to make assessment of the damages in respect of the bags, number of bags actually damaged under the invoice. The tribunal has accepted that the weight of the each bag was 45 kgs. as per the evidence of the claimant. In the circumstances, the defence of said to contain is not available to the appellants.

9. Lastly Mr.Samant for the appellant states that the appellant has deposited the amount. In the result, I pass the following order:-

:ORDER:

. The Appeal is partly allowed.

. The liability of payment will be of the General Manager, Central Railway only and not of the other railways.

. The principal amount awarded will carry interest at the rate awarded by the tribunal from the date of application up to the date of withdrawal by the claimant of the amount deposited by the railways pursuant to the order of this court or up to the date of investment

with proportionate costs of the tribunal.

. so far as this appeal is concerned, no order as to costs.

[D.G.DESHPANDE]